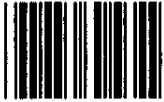


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3:98-CV-00885 SECURITY ASSETS V. AMERIWEST

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J. Herken  
CLERK

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

SECURITY ASSETS CREDIT CORP., a  
California corporation and Sometimes doing  
business as FDIC MANAGEMENT FUND  
37.5 M.,

Plaintiff,

vs.

AMERIWEST ENTERPRISE, INC., an  
Oregon corporation; WILLIAM M. EVANS,  
an individual; COLLINS FINANCIAL  
SERVICES, INC., a Texas corporation; and  
FOURSCORE RESOURCE CAPITAL, a  
Minnesota Limited Liability Company;  
WALTER COLLINS, an individual; ROGER  
KNAUF, an individual,

Defendant.

CASE NO. 98-CV-885 H (POR)

**Order Granting Motion to  
Determine Good Faith of Settlement  
[Doc. # 41, 44, 47]**

Defendants Collins Financial Services, Inc. and Walter Collins, an individual ("Collins defendants") and Fourscore Resource Capital and Roger Knauf ("Fourscore defendants") brought a motion to determine good faith of settlement in the above-entitled matter. No opposition to this motion has been filed by remaining defendants Ameriwest Enterprises, Inc. ("Ameriwest") or William M. Evans ("Evans") or by plaintiff Security Assets Credit Corp. ("Security Assets"). After considering the papers filed and the law, the court grants the motion of the Collins defendants and the Fourscore defendants, and finds the settlement to be in good faith.

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The Fourscore defendants and the Collins defendants attached to the contract with defendant Ameriwest a debt scrubber report, which indicated that the average account was last closed in May 1988 and that the accounts had “limited liquidity.” (*Complaint*, Exh. A, B.) The Fourscore defendants and the Collins defendants disclosed to Ameriwest and Evans that the accounts in the credit card portfolio had been sent out for collection numerous times before. (*Declaration of Bruce Altschuld*, ¶ 3.)

On August 19, 1998, default was entered against defendants Ameriwest and Evans. On October 21, 1998, the Collins defendants, the Fourscore defendants and Colorado entered into a settlement agreement with plaintiff Security Assets for \$235,000. The Collins defendants paid \$35,000, while the Fourscore defendants and Colorado paid \$200,000.

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California Code of Civil Procedure section 877.6(a) provides for a hearing on the issue of the good faith of a settlement. In determining whether a settlement is in good faith, the court should consider "the settlor's proportionate liability, the amount paid in settlement, the allocation of settlement proceeds among plaintiffs, and a recognition that a settlor should pay less in settlement than if found liable after a trial." Tech-Built v. Woodward-Clyde, 38 Cal.3d 488, 499 (1985). Other relevant considerations include "the financial conditions and insurance policy limits of settling defendants, as well as the existence of collusion, fraud, or tortious conduct aimed to injure the interests of nonsettling defendants." Tech-Built, 38 Cal.3d at 499. Finally, practical considerations require that the evaluation be made on the basis of information available at the time of the settlement. Tech-Built, 38 Cal.3d at 499.

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1 The only guideline to plaintiff's approximate recovery is the purchase price of the portfolio,  
2 \$592,490.02. Plaintiff collected approximately \$100,000 from Colorado before initiating the lawsuit.  
3 (*Collins Defendants' Brief* at 7.) Plaintiff has also collected approximately \$100,000 from accounts  
4 in the credit card portfolio. (*Id.*) Thus, along with the \$235,000 paid in settlement by the Collins  
5 defendants and the Fourscore defendants, plaintiff has already collected \$435,000.

6 A settlement in a case with multiple defendants should be a rough approximation of each  
7 defendant's liability. Regan Roofing Co., Inc. v. Superior Court, 21 Cal. App. 4th 1685 (1994). Here,  
8 the Collins defendants and the Fourscore defendants have presented evidence that their liability is  
9 relatively small, and yet they have paid in settlement approximately one-third of purchase price of the  
10 credit card portfolio. Such a settlement seems reasonable, a rough approximation of the settling  
11 defendants' liability, and thus in good faith. This is especially true as a settling defendant usually  
12 should pay less than if it were found liable at trial. Tech Built, 38 Cal.3d at 499.

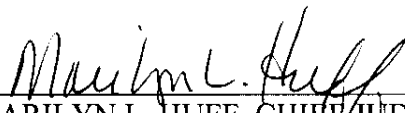
13 The settling defendants have also made the required factual showing. Substantial evidence  
14 showing the nature and extent of the settling defendants' liability is required in a motion to determine  
15 good faith of settlement. Mattco Forge, Inc. v. Arthur Young & Co., 38 Cal. App. 4th 1337, 1348  
16 (1995). The Collins and Fourscore defendants have included declarations and loan documentation  
17 which support their allegation that the settlement is roughly proportional and in good faith, thus  
18 satisfying this requirement.

### 19 Conclusion

20 The settling defendants have produced substantial evidence to show the settlement is roughly  
21 proportional to their liability, and no opposition has been filed by the plaintiff or by defaulting  
22 defendants Ameriwest and Evans. Therefore, the court grants the motions of the Collins defendants  
23 and the Fourscore defendants to determine the settlement is in good faith.

24 IT IS SO ORDERED.

25 DATED: 1-8-99

26   
27 MARILYN L. HUFF, CHIEF JUDGE  
28 UNITED STATES DISTRICT COURT

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